

CRIMINAL MISC. APPLICATION NO. 1047 OF 1996.

Date of decision: 20.3.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. K.J. Kakad, advocate for petitioner.

Mr. N.D. Patel, A.P.P. for respondent-State.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R. R. Jain, J.

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March 20, 1996.

Oral judgment:

Rule. Mr. Patel, learned A.P.P. waives service of rule for respondent-State.

When the matter was taken up for hearing on 18.3.1996, the petitioner was directed to personally remain present in the court today. When the matter is called out today for hearing, neither the petitioner nor his advocate is present.

On perusal of FIR it appears that though the petitioner/original accused does not have any right,

title or interest over the property bearing S.No.88/1, plot No.6, yet by fabricating Government seals and documents, he had sold it to somebody and the very document was produced before appropriate authority. It is in this background that the real owner filed complaint under Sections 465, 467, 468 read with Section 114 of IPC with Rajkot Police Station and the same is registered as CR No.125/95. Aggrieved by the aforesaid FIR, the petitioner has come before this court under Section 438 of Cr.P.C. for being enlarged on anticipatory bail.

I have heard Mr. Patel, learned A.P.P. for respondent-State and also perused investigation papers which are kept ready for perusal of court. On perusal of investigation papers, prima facie, there appears to be sufficient material to connect the petitioner with commission of offence as alleged. My attention is also drawn to Panchnama vide which seals in the name of Notary, Sub Registrar, Stamp Vendor, Talati cum Mantri, etc., have been recovered from the co-accused and, therefore, entire case shall be deemed to have been based on documentary evidence leaving no scope of false roping in or victimising the petitioner owing to political rivalry or social status and influence of complainant and, therefore, in my view, provisions of Section 438 of Cr.P.C. are not attracted. Consequently, no relief as prayed for can be granted. Exercise of discretion at this stage may hamper investigation.

Mr. Patel, learned A.P.P., also submits that right since the day when the petitioner has come to know about lodging of FIR in question is absconding and is not traceable despite rigorous efforts made by the investigating agency. Apart from the merits as discussed above, this circumstance alone is sufficient to dismiss the application as at all if the petitioner is enlarged on bail it would be difficult for the investigating agency to secure his presence.

In the result, the application is rejected. Rule discharged.